IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9-10-2006

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THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.569 of 2003

R.Raghunathan .. Appellant

vs

State by
Inspector of Police
(Crime No.1112 of 2001)
R-6 Kumaran Nagar P.S.
Chennai .. Respondent

Criminal appeal preferred under Sec.374 of the Code of Criminal Procedure against the judgment of the Sessions Judge, Magalir Neethi Madram, Chennai, in S.C.No.345 of 2001 dated 10.2.2003.

For Appellant : Ms.K.Sumathi
For Respondent : Mr.P.Kumaresan, A.P.P.

JUDGMENT

(Judgment of this Court was delivered by M.CHOCKALINGAM, J.)

The sole accused in a case of murder who stood charged, tried and found guilty as per the charge and awarded life imprisonment along with a fine of Rs.5,000/- and default sentence by the Mahila Court, Madras, in S.C.No.345 of 2001, has challenged the judgment as to conviction and sentence.

2.Shorn of unnecessary details, the short facts necessary for the disposal of this appeal can be stated thus:

(a) The appellant/accused is the husband of the deceased Chamunddeeswari. They had three female babies. He was a drunkard. It is his usual practice to come in a drunken mood every night and have quarrel with his wife. As usual, on 21.6.2001 at about 9.45 P.M., he came back home and paid Rs.20/- to her. His wife asked, having three children, how to maintain with this Rs.20/-, and in turn, he uttered in a filthy language. Following the quarrel, she poured kerosene on her as a measure of threat. Then, he lit a match stick, threw it on her and set fire. She raised distressing cry. The accused took a tub of water and poured on her to quench the fire. She came out of the house. Then, she was proceeding to her mother's house situated nearby and informed to her mother, P.W.1, and P.W.2, the brother-in-law, who immediately took her to the hospital. The accused fled away from the place of occurrence. She was taken to Government Royapettah Hospital, where P.W.8, the Medical

Officer, was on duty. The Doctor found that she was conscious, and she gave a statement to the Doctor that it was her husband who set fire, when she poured kerosene on her. The accident register copy is marked as Ex.P3. An intimation was given to the respondent Police Station, where P.W.10, the Sub Inspector of Police, was on duty. He came over to the hospital and took the statement of the deceased which is marked as Ex.P6. Thereafter, he went to the Police Station and registered a case in Crime No.1112 of 2001 under Sec.307 of I.P.C. The express First Information Report Ex.P7, was despatched to the Court.

(b) On receipt of the copy of the F.I.R., P.W.11, the Inspector of Police, took up investigation, proceeded to the spot, made an inspection in the presence of two witnesses and prepared Ex.P8, the observation mahazar, and Ex.P9, the rough sketch. He also recovered M.Os.1 to 3 from the place of occurrence. Then, a requisition was given to the Judicial Magistrate for recording the dying declaration of the deceased. Accordingly, P.W.7, the Judicial Magistrate, went over there and recorded the dying declaration of the deceased at about 8.35 A.M. on 22.6.2001. Ex.P2 is the dying declaration given by her. Following the same, at about 10.00 A.M., she died. A communication was given to the police. On receipt of the death intimation, the case was altered to Sec.302 of I.P.C. The express report was sent to the Court. The Investigator conducted inquest on the dead body of Chamunddeeswari in the presence of witnesses and panchayatdars, examined the witnesses and recorded their statements. Then, a requisition, Ex.P4, was given to the hospital authorities for the purpose of autopsy.

(c) P.W.9, the Tutor/Assistant Professor, Forensic Medicine Department, Government Royapettah Hospital, Chennai, on receipt of the said requisition conducted autopsy on the dead body of Chamunddeeswari and found the following injuries:

"1. Extensive mixed burns involving face, front and back of neck, most part of front and back of upper half of trunk, front and back of entire right and left upper limb and front, back and outer aspect of right thigh and buttock.
Evidence of vital reaction singing of hair and degloving of skin of both hands made out.

2. Incised wound 2.5 x 1 x 1 cms over inner aspect of lower end of right leg-surgical.

3. Incised gaping wound over the inner aspect of lower end of left leg 8 x 3.5 x 1.5 cms □ surgical.

O/D scalp □ Oedematous."
The Doctor has issued Ex.P5, the postmortem certificate, with his opinion that the deceased would appear to have died of shock due to burns.

(d) Pending the investigation, the accused was arrested on 23.6.2002. All other witnesses were examined and their statements were recorded. The accused was sent for judicial remand. On completion of investigation, the Investigator filed the final report against the appellant/accused under Sec.304 of I.P.C.

3.The case was committed to Court of Session and necessary charge was framed under Sec.302 of I.P.C. In order to substantiate the charge, the prosecution examined 11 witnesses and also marked 11 exhibits and 3 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. On the side of defence, one of the daughters of the accused was examined as D.W.1. After the evidence on both sides was over, both sides were given opportunity to advance their arguments. The arguments were heard and the materials were also scrutinised by the trial Court. After doing so, the learned trial Judge found the

appellant/accused guilty as per the charge and awarded life imprisonment, which is the subject matter of challenge before this Court.

4.Advancing her arguments on behalf of the appellant, the learned Counsel Ms.K.Sumathi would submit that in the instant case, the prosecution has not proved the case beyond reasonable doubt; that it is an admitted fact that the accused is the husband of the deceased; that they had often quarrel; that on that date, when he came in the night hours, there was a quarrel preceding the occurrence; that it was she who poured kerosene on her; that as per the prosecution case, it was he who set fire on her; that in this regard, the only witness who was competent to speak about the fact, was one of the children of the spouses, and she was examined as D.W.1, who is an eyewitness; that when D.W.1 was examined, she was 7 years old; that this witness, for the reasons best known to the investigating agency, was neither examined nor interrogated by the Police Officials at the time of investigation, nor was she examined before the Court by the prosecution; that it is a case where an adverse inference should be drawn that had the witness been examined and interrogated by the police and examined before the Court, she would have talked the truth; but, the evidence of D.W.1 would go to show that it was she (deceased) who not only poured kerosene on her, but also set fire; that the evidence of the child witness, D.W.1, who was an eyewitness to the occurrence, has got to be relied; that if this evidence has got to be taken into account, all other part of the prosecution case should have been rejected; that the lower Court has not taken into consideration the same, and if to be so, he is entitled for an outright acquittal.

5.The learned Counsel advancing her further arguments would submit that even assuming that the case of the prosecution that it was the accused who set fire after she poured kerosene on her, the act of the accused would not attract the penal provisions of murder; that even in the case, originally the charge sheet was filed under Sec.304 of I.P.C. and not under Sec.302 of I.P.C.; but, the lower Court has framed a charge under Sec.302 of I.P.C.; that even the facts of the prosecution case would go to show that he came from the work, and at that time, she was demanding money; that as usual, there was a quarrel that took place; that in that quarrel, in order to show by way of threat, she poured kerosene on her, and provoked by the same, he set fire, which followed the quarrel only; that the evidence would go to show that the act of the accused was neither intentional nor premeditated, but only due to the sudden provocation following a quarrel; that under the circumstances, the act of the accused would fall under Exception 4 to Sec.300 of I.P.C., and hence, it has got to be considered by the Court.

6.The Court heard the learned Additional Public Prosecutor on the above contentions.

7.The Court paid its anxious consideration on the submissions made.

8.It is not a fact in controversy that one Chamunddeeswari, the wife of the accused, died out of the burn injuries for which she was actually put under treatment before the hospital. The contention put forth by the learned Counsel for the appellant that it was she who not only poured kerosene on her, but also set fire has got to be rejected for more reasons than one. In the instant case, immediately after the occurrence, she came out shouting, and making the distressing cry, she informed to P.W.1 that it was her husband who set fire. Following the same, she was taken to the hospital, where P.W.8, the Doctor, was on duty, to whom she has also given a statement. The accident register copy if also marked as Ex.P3, wherein she has clearly spoken to the fact that it was she who poured kerosene on her, and it was he who set fire. Thereafter, she has given a statement to the Sub Inspector of Police, P.W.10, which is marked as Ex.P6. On the basis of Ex.P6, a case came to be registered. The crowning circumstance in the case is the dying declaration recorded by the Judicial Magistrate, P.W.7. He has clearly spoken to the fact that on a requisition, he went over to the hospital; that she was conscious, which fact was also certified by the Doctor; and that her statement

was recorded. The proceedings are marked as Ex.P2. Ex.P2 coupled with the surrounding circumstance would also speak to the fact that it was the accused who set fire. In the instant case, had it been true that she was tutored to speak like that, there was no occasion for her to tell that it was she who poured kerosene. She would have further added that it was he who poured kerosene and set fire also. This would be indicative of the fact that she has spoken the truth and nothing but truth.

9.Now, the contention put forth by the learned Counsel for the appellant that the evidence of D.W.1 should have been relied by the prosecution cannot be accepted for the simple reason that the child was 7 years old and was in the custody of the father, and she was also brought to the Court by him and examined on his side. The non-examination of D.W.1, a child witness, though available at the place of occurrence, in the instant case, in the face of and in view of the availability of the dying declaration referred to above, cannot be given any credence at all. Under the circumstances, this Court is of the opinion that the prosecution has proved the fact that it was he who set fire on her, after she poured kerosene, and she succumbed to the injuries as a direct consequence.

10.Coming to the second line of argument put forth by the learned Counsel for the appellant, this Court is able to see force in the same. Even as per the prosecution case, the spouses used to quarrel, and on the fateful day also, she demanded money, and he gave only Rs.20/-. Following the same, there was a quarrel, and in that quarrel, in order to show by way of threat, she poured kerosene on her, and being provoked by such a situation, he set fire on her. The sequence of events would speak that following the quarrel between the spouses, she poured kerosene, and on that provocation, he also set fire. Hence, the act of the accused cannot be termed as one intentional or premeditated, but one due to provocation. In the instant case, it is not a fit case, where the Court can apply the penal provisions of murder, but only culpable homicide not amounting to murder. It is also brought to the notice of the Court that he has got two children, and they are actually in his custody. Taking into consideration the totality of the circumstances, this Court is of the opinion that finding him guilty under Sec.304 (Part II) of I.P.C. and awarding the punishment of 5 years Rigorous Imprisonment would meet the ends of justice.

11.For the above reasons, the conviction and sentence of life imprisonment imposed on the appellant/accused under Sec.302 of I.P.C. are set aside, and instead, he is convicted under Sec.304 (Part II) of I.P.C. and directed to suffer 5 years Rigorous Imprisonment.

12.In the result, with the above modification in conviction and sentence, this criminal appeal fails, and the same is dismissed. It is reported that the appellant is on bail. Hence, the Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence.

nsv

To

1) The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

2) The XXIII Metropolitan Magistrate, Saidapet, Chennai,
through The Chief Metropolitan Magistrate, Egmore,
Madras.

3) The Sessions Judge, Magalir Neethi Mandram, Chennai.

4) The Superintendent, Central Prison, Vellore.

5) The Inspector of Police, R6 Kumaran Nagar Police Station Chennai.

6) The Public Prosecutor, High Court, Madras.

7) The District Collector, Madras.

8) The Director General of Police, Madras.

[AM-8209]